

WORKING DRAFT
LICENSURE ISSUES – SRPL BOARD
September 13, 2011

1.0 TEMPORARY LICENSES

Overview: Under SRRA, temporary licenses are the responsibility of NJDEP, not the Board. The Board needs to be concerned that temporary licenses continue to be issued by NJDEP to all applicants who qualify, and that there is a smooth transition from temporary licenses to permanent licenses, whenever that may occur.

- A. Training Issues. SRRA specifies that applicants for temporary licenses take an 8-hour course given by NJDEP.
No action needs to be taken by the SRPL Board, nor do we have any concerns at this time.
- B. 2012 Renewals. A procedure was established by the Board in March for 2012 renewals – which will be necessary to implement. Notification to temporary license holders will go out on October 31, 2011 from NJDEP. Prior to that date, the Finance Committee and the Board will establish the fee for 2012 license renewals.

We have a concern that since many temporary licenses were issued during the September – December 2009 period, they will “expire” three years after the initial date of issuance.

We need to have the Assistant A.G. research our ability to extend these temporary licenses through December 2012, and if necessary, beyond. We need to have this ability in place by June 1, 2012 in order to insure continuity. The Assistant A. G. advised us on August 24, 2011 that temporary license renewal is legally defensible, and is the responsibility of NJDEP.

- C. Extensions Beyond 2012. The Board has to be prepared for NJDEP to issue temporary licenses in 2013. This is the same issue we’ve identified for 1B, and it will have to be resolved through the same mechanism.
- D. Continuing Education. The Licensure Committee recommends that no continuing education requirements be set for temporary license holders. If temporary licenses have to be extended into 2013, we can re-visit this in June 2012. This was discussed at the June 27 meeting of the SRRA Training Coordination (stakeholder) group with the Continuing Education Committee.

No action needs to be taken by the SRPL Board at this time.

Note: There was one commenter who *did* recommend that there be a continuing education requirement for temporary license holders.

2.0 LICENSE EXAMINATION

Overview: Unlike with the issue of temporary licenses, the Licensure Committee at this time has many concerns and few answers regarding the examination, the contract and the contractor. Therefore, attention to the examination will likely be an issue for the Committee for the foreseeable future. Regardless of our inability to influence the examination, the Board has a “need to know and understand” what the contractor is planning, thinking and doing.

- A. Contracting Issues. We believe that the Board, through this Committee, should meet with the contractor and NJDEP as early in the process as possible. The Committee Chair should be the point person for this contact. Key issues on the table will be:
- Scope of the contract
 - Input by LSRPs and other persons concerned with the SRP programs into the job analysis phase of the contract.
 - Understanding the contractor’s process and procedures for developing the examination
 - Understanding the proposed “nature” of the license exam
- B. Job Analysis. We will work with NJDEP and other relevant groups to have meaningful input into the job analysis phase of the contractor’s work.
- C. Exam Questions. We may not have input into developing the exam questions, but we need to know how the questions will be developed, the types of questions, number of questions, etc.

Note: One commenter recommended that the exam focus only on regulatory issues, and be open book/computer.

- D. Examination Schedule. The Licensure Committee recommends for now (the contractor could have other thoughts) that the examination be given quarterly during its first year and semi-annually thereafter.

We also believe that it may be best to stagger the schedule by which temporary license holders take the exams i.e., some in October 2012, January 2013, April 2013, July 2013. If we follow such a procedure, temporary licenses will have to be extended accordingly.

An alternative to the quarterly examination schedule would be to offer the examination 30 days from a failure notice to enable those temporary license holders who fail the examination to take a re-examination as quickly as possible.

- E. Administration. We need to know what the contractor offers in the administration of the exam, and what that will cost. Where will the exam be given? Will it be developed for LSRPs to take the exam by computer? How is that kept secure? We need a system that the contractor can initiate and then hand over to the Board through its DEP staff.

- F. Evaluation of Examination Performance. The Board needs to know what the basis is for determining who passes and who fails? Will this change over time? This requires discussion with the contractor. We also need to inquire how this is done in Massachusetts.
- G. Contingency. Assuming a contractor is hired, but the exam fails to yield reasonable results, we need to have a Plan "B" for issuing Permanent Licenses.

3.0 APPLICATIONS FOR LICENSE EXAMINATION

Overview: Ultimately, all licensees will be "permanent" licensees by virtue of having taken and passed a license exam.

In the short run, there are two categories of individuals who will apply to take the license examination; LSRPs who are temporary license holders and non-LSRPs. In the long run, all applicants will be non-LSRPs.

- A. Approval Process. The Licensure Committee recommends that all applications for the license examination be reviewed by the Board's staff (NJDEP) who are given the specifications for the review by the Committee. The staff will recommend approval or denial of the application to the Board through the Licensure Committee.

Any denial of an application will come to the Licensure Committee with a justification, and the Committee may, if it chooses, review the application and recommend approval to the Board.

The Board will deny an application for the license examination if the applicant fails to meet any of the requirements for licensing set forth in SRRA Section 10C-7d.*

Notices of approval or denial will be sent out by staff on behalf of the Board.

- B. Temporary LSRPs. The Licensure Committee recommends that the application process for temporary LSRPs be as simple as possible, and is likely to consist of a certification by the temporary license holder that he/she meets all of the requirements for holding a permanent LSRP license. Temporary license holders must be current in the payment of their license fees to be approved to take the examination.

- D.C. Non-LSRPs. In the future, the application for the license examination will be the principal application leading to the issuance of the license. Therefore, the application will be detailed, and will parallel the application developed in 2009 by NJDEP for temporary licenses, only the level of experience will reflect the specifications in SRRA for experience.

- F.D. Audit Results – Professional Conduct Outcomes. The Audit and Professional Conduct procedures apply only to temporary licensees insofar as applying for the license

examination. In all likelihood, the slowness of the hearing process is such that there will be no professional conduct outcomes at the time the examination is first offered.

*The NJDEP Board Liason, Karen Hershey, and the Assistant A.G., Kimberley Hahn, have confirmed that this is a Board function, and not an NJDEP function.

If a temporary LSRP does have his/her license suspended at the time of the examination, it is our recommendation that this individual be allowed to take the examination so that if he/she passes the examination, the license can be issued at the completion of the suspension.

G.E. Pre-Examination Information. Discussions will take place with the examination contractor to determine what they are prepared to offer. We believe that the contractor should develop an examination orientation/guidance document, and a voluntary orientation session, CD and possibly a webinar.

The Continuing Education/SRRA Training Coordination Group (Continuing Education stakeholders) have expressed thoughts that any pre-examination training should not be taught “to the exam” and should not be given by the contractor. It is too early to take a position on this – depending on what the contractor has to say about this.

The Continuing Education and Licensure Committees are unlikely to “endorse” any pre-exam courses given by outside training organizations (Rutgers, NJIT, LSRPA, etc.); however, we would not object to such courses being given provided they do not state that they are endorsed by the SRPL Board or that they are specific to preparing for the examination.

H.F. Examination Fee. An examination fee will be developed by the Finance and Licensure Committees to cover the cost of processing applications and conducting the examination. These fees will be paid at the time an examination application is submitted and will be entirely separate from the annual license fee.

Fees for new applicants will be higher than fees for temporary license holders, as processing costs will be higher for new applicants.

4.0 ISSUANCE OF PERMANENT LICENSES

Overview: For each person taking the license examination, there are two possible outcomes – passing or failing.

We recommend that for persons who pass the examination, it is in the best interest of the SRPL Board and NJDEP for permanent licenses to be issued quickly and efficiently.

For persons who fail the exam it should be the Board’s policy to provide timely opportunities for re-examination as specified under SRRA.

- A. Certifying and Publishing Examination Results. Assuming the examination is capable of being evaluated electronically, the results should be conveyed to the Board in a very timely manner for Board Certification. Once certified, the list of those who passed and therefore qualify for their permanent license, and those who fail will be published on the SRPL Board website. At the time that a licensee's name is put on the website, the *Permanent License will take effect*. For LSRPs who fail the examination on his/her first or second try, the temporary license will remain in effect subject to Section 4C.
- B. Permanent Licenses. Persons certified by the Board as passing the exam and qualifying for a Permanent License will receive a license certificate from the Board, a letter notifying the applicant of the issuance of the license, information about future renewals, and any other information that the Board deems to be pertinent to the receipt of the Permanent License by the applicants. Also included will be notification regarding current or future fees to be paid.
- C. Temporary License Extensions. The Board or NJDEP may extend temporary licenses for a period not to exceed 9 months to enable persons who fail the examination to take up to two additional examinations within a 9-month period. Temporary license holders who do not pass the examination within 9 months will have their licenses terminated and may not apply to retake an examination for a period of at least one year. The Committee recommends that there be discussions between the Board and the examination contractor related to the schedule for reexamination.

Temporary licenses may not be extended for a period of greater than 9 months from the first date that the license examination is conducted.

- D. Failure to Earn a Permanent License. Persons who lose their licenses due to failure to pass the examination may no longer practice as an LSRP. Termination of a temporary license by an individual will be prominently published on the SRPL Board website.

As stated in SRRA, N.J.S.A. 58:10C-11, no person shall be, act as, advertise as, or hold himself out to be, or represent himself as being a licensed site remediation professional unless that person has been issued a valid license pursuant to P.L. 2009, c.60.

Such person shall be subject to penalties as detailed in SRRA Section 17 – Actions of Board relative to violations which can include a fine of not less than \$5,000 nor more than \$75,000 per day of violation or by imprisonment, or both.

The Board recommends to NJDEP that all RAOs and documents prepared by an LSRP who fails to earn a permanent license be considered to be valid as these documents *were prepared at the time that a valid temporary license was in effect*.

- E. Temporary LSRPs–UST Only. SRRA, Section C-13d allows NJDEP to issue licenses to persons with the specified experience but lacking the specified education requirements. These persons may undertake the remediation of discharges from

underground storage tanks only. It is our understanding that NJDEP has issued a handful of such temporary licenses.

Consistent with SRRA Section C-7f, temporary LSRP-UST license holders may take the license examination one time to qualify for a Permanent (unrestricted) LSRP license. A person who does not satisfactorily complete the license examination "shall not be authorized to reapply for a permanent license".

5.0 LICENSE RENEWALS

Overview: License renewals are specified in SRRA, Section 10c-9 *Application for renewal of license*; which states:

A licensed site remediation professional shall submit an application for license renewal at least 90 days and no more than 120 days prior to expiration of the license. The board shall establish standards and requirements for the renewal of the site remediation professional license and may require training or continuing education, experience or other requirements as a condition for renewal of a license. An application for a license renewal shall be accompanied by an application fee.

- A. Renewal Process. NJDEP staff to the Board will develop a process for timely renewals of LSRP licenses based on the requirements specified in SRRA and direction from the Board and the Licensure Committee.
- B. Renewal Applications. Renewal applications will be made through the Board's website: www.nj.gov/lrspboard in a process that parallels the renewal of PE and other professional licenses. The online application will require the LSRP seeking license renewal to certify to the issues specified by SRRA for holding a license, including:
- Continued professional experience
 - Completion of minimum environmental health and safety training
 - Not having been convicted of crimes detailed in SRRA Section 10c-7d(6)
 - Not having any professional license revoked as detailed in SRRA Section 10c-7d(7)
 - Meeting all continuing education requirements adopted by the Board
- C. Renewal Term. SRP licenses shall be renewed by the Board for a period of three (3) years, unless for a specific licensee the Board, in a professional conduct disciplinary action, determines that the renewal is to be for a shorter duration.
- D. Renewal Fees. The Board will establish LSRP license fees on an annual basis to "cover the costs of the Licensing program" SRRA 58:10c-7(c). Each licensee will pay the annual fee, and in the renewal year, the Board may elect to require the payment of an additional renewal processing fee.

6.0 LICENSE REINSTATEMENT

Overview: Section C.58:10c-8 *suspension, revocation of license; reinstatement* gives the Board authority to suspend and revoke licenses, as well as to reinstate a license. This section of SRRA states: "The Board shall establish standards and requirements for the reinstatement of a site remediation professional license that has been suspended or revoked."

- A. License Application Denial. SRRA 58:10c-8b states that if an application for an initial license or a license renewal is denied, the applicant is prohibited from applying for a license for a period of not more than three years. A license denial by the Board will include a statement of the reason for the denial, and a minimum time period by which the person may re-apply, providing that upon a re-application that person then meets all of the applicable requirements for a license.
- B. License Revocation. Revocation is a removal of a license, therefore the person whose license is revoked may not be re-licensed unless an application for a new license is submitted and the applicant meets all requirements for licensure, including passage of the license examination. Under SRRA, the Board may prohibit that person from applying for a license for a period of not more than three years.

However, if the person whose license is revoked is found by the Board to have violated Section 10c-7d(6) (criminal conviction) that person's license revocation will be held by the Board to be permanent, and therefore, he may not re-apply and the license will not be reinstated.

If the person whose license is revoked is found by the Board to have violated Section 10c-7d(7) (revocation of other professional licenses) his site remediation professional license may not be reinstated until 10 years have elapsed from the time of the revocation of another professional license. In that event, the SRP license holder may re-apply for a SRP license 10 years from the date of the prior revocation.

- C. License Suspension. While not specifically addressed in SRRA, a license suspension by the Board will be deemed to be a temporary occurrence, and therefore the reinstatement of a suspended license will occur at the completion of the term of the suspension. Any suspension of a license by the Board should include a statement of the term of the suspension.

Note: The following provisions are adopted largely from the Massachusetts licensing rules. We are not necessarily intending to replicate these provisions "as is" in the New Jersey rules.

A licensed site remediation professional whose license has been suspended shall be subject to the following additional license renewal requirements:

- (a) If the licensee's license expiration date has not been reached when the suspension period ends, the license expiration date does not change. The license renewal requirements remain as described in the New Jersey rules except that the Board may,

when issuing the suspension, require the licensee to obtain additional continuing education credits as a condition of license renewal.

- (b) If the licensee's license expiration date would be reached before the suspension period ends, the license expiration date shall be extended to the end of the suspension period. The LSRP must renew his or her license as a condition of having his or her license reinstated at the end of the suspension period. The Board shall not reinstate the license unless and until the licensee's license has been renewed. The license renewal requirements remain with the following exceptions:

1. The Board may, when issuing the suspension, require the licensee to obtain additional continuing education credits as a condition of license renewal; and
2. For each full year that the suspension extends beyond the LSRP's nominal renewal date, the minimum number of credits required in each credit category shall be increased automatically by one-third (1/3) of the number specified in the rules specifying continuing education.
3. If the LSRP renews his or her license and it is reinstated, the LSRP's next license expiration date shall be three years thereafter.
4. If the LSRP fails to renew his license within 90 days after the date the term of suspension was scheduled to end, his license shall lapse and may not be renewed thereafter. In such instances, the individual may reapply in the manner specified in Section 6B above.

7.0 FAILURE TO RENEW

Overview: The following provisions are adapted largely from the Massachusetts licensing rules, which states, in part:

If a licensed site professional whose license is not suspended fails to renew his or her license in accordance with the rules, his or her license shall lapse at the close of business on the date of expiration of his or her license. A person whose license has lapsed and not renewed by the Board shall not act as, advertise as, hold himself or herself out to be, or represent himself or herself as being, a licensed site professional. A person whose license has lapsed may re-obtain a license to practice in the following manner:

- A. Renewal Within One Year. A person whose license has lapsed may renew his or her license at any time during the following year by meeting all the renewal requirements set forth in the rules, including the payment of the applicable license renewal processing fee. A license that is renewed during the year after it has lapsed, shall run for three years.

B. Renewal Beyond One Year. A person who fails to renew his or her license within one year of the date of expiration of his or her license may thereafter reapply by submitting the following:

1. A complete new licensure application in a form approved by the Board.
2. The full application fee.

If the application is approved, the applicant must pay a full examination fee and pass a licensing examination within the following 6 months to obtain a full license, and he or she may not act as, advertise as, hold himself or herself out to be, or represent himself or herself as being a licensed site professional until he or she has passed an examination.

3. At the time the application for the licensing examination is approved, the applicant must demonstrate that he or she has met all of the continuing education requirements for the past three years *as if he or she had continued to hold the SRP license and was applying for a license renewal*.

C. Failure to Meet Continuing Education Requirements. Note: Massachusetts has a complicated provision for a 90-day extension of licenses that we are not in favor of. However, so that you may consider such a provision, the introduction to that section is provided below.

(5) Notwithstanding 309 CMR 3.06(4), if at the time he or she must submit a renewal application form a licensed site professional has obtained all but 12 or fewer of the continuing education credits required to renew his or her license, the licensed site professional may apply to the Board for a 90-day extension of his or her license expiration date for the purpose of obtaining the additional required continuing education credits.

8.0 INACTIVE STATUS

We recommend that the Board create an *inactive status* for certain permanent license holders, who request such status as a result of certain types of hardship, including:

- Unemployment – financial hardship,
- Pursuit of a full-time degree,
- Extended medical or family leave of absence,
- Active duty in the armed forces.

Persons on inactive status will not pay license renewal fees, and will not conduct any remediation in New Jersey as an LSRP. The Committee will establish a maximum time limit for an LSRP on inactive status, and will establish continuing education requirements to reinstate a permanent license from the inactive status.

9.0 EXTENUATING CIRCUMSTANCES

An LSRP may petition the Board for a variance from the licensure rules if he or she believes that there are extenuating circumstances that apply to his or her licensure status.

The Board may grant such a variance following a full consideration of those circumstances, recommendation by the Licensure Committee, and concurrence by the Board's Chairman on behalf of NJDEP. In this event, the Board will specify conditions relating to its variance of the licensure rules.